



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34549994

Date: OCT. 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish she satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined the Petitioner fulfilled only the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains she meets six additional evidentiary categories.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, the Petitioner must demonstrate her prizes or awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field including, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.¹

The Petitioner presented a December 2010 certificate stating that she received a “Best Debut by Popular Choice” award at the 6th [REDACTED] Music Awards. In his first letter of support, [REDACTED] Sales Executive at [REDACTED] indicated that “[t]his accolade, awarded for [the Petitioner’s] captivating rendition of [REDACTED] from her second album [REDACTED] stands as a testament to her extraordinary talent and steadfast dedication.” In his second letter of support, [REDACTED] stated: “Criteria for selecting the winner include vocal ability, artistic innovation, public engagement and overall impact on the music industry. The selection is meticulously carried out by an esteemed panel of jury members, composed of veteran musicians, music producers, and other industry professionals.” Another letter of support from [REDACTED] a judge at the 6th [REDACTED] Music Awards, stated that the Petitioner was recognized “as the Best Singer (Popular Choice) at the [REDACTED] Awards. This award not only celebrated her individual achievement but also highlighted her ability to connect with the audience through her melodious voice and heartfelt renditions.”

In addition, the Petitioner presented articles from Banglanews24.com and *The Daily Star* predating the 6th [REDACTED] Music Awards [REDACTED] 2010 ceremony. The August 2010 article in

¹ See generally 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

Banglanews24.com lists the award categories and asks for artists or production companies to submit their audio albums for consideration. The November 2010 article in *The Daily Star* announces the nominees “in 15 different categories,” including the Petitioner in the “Best Promising Artist” category. These articles do not indicate that the Petitioner’s [REDACTED] 2010 award at the 6th [REDACTED] Music Awards received media coverage or attention that rises to the level of national or international recognition. The Petitioner also provided information from *Wikipedia* about the [REDACTED] Music Awards. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded minimal evidentiary weight. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).²

In addition, the Petitioner provided a trophy indicating that she was a recipient of a [REDACTED] [REDACTED] Honorary Award - 2021 for Special Contribution to Music.” A letter of support from [REDACTED] an organizer for the [REDACTED] Award Committee, stated: “This prestigious award, named in honor of our celebrated poet [REDACTED] is a significant acknowledgement in the Bangladeshi media landscape, celebrating those who have made outstanding contributions to Bengali culture, acting, and literature.”

While the Petitioner submitted letters of support from an organizer and a judge for the 6th [REDACTED] [REDACTED] Music Awards and from an organizer of the [REDACTED] Honorary Award, these letters do not show that either of her specific awards garnered sufficient recognition beyond the context of the events where they were presented. The Petitioner has not demonstrated the significance of her awards in the field of endeavor or that they have received media coverage or other attention that rises to the level of national or international recognition. Without further evidence regarding their national or international significance in her field, the Petitioner has not demonstrated that her awards are nationally or internationally recognized prizes or awards for excellence in the field. The Petitioner therefore has not established that she meets this regulatory criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends eligibility for this criterion based on her membership with the Bangladesh Shilpakala Academy, Bangladesh Television, and Bangladesh Betar. USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.³ The petitioner must show that

² See also information from https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 9, 2024, which indicates that *Wikipedia*’s content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate, or reliable information.... Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized, or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

³ See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.

membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.⁴

The Petitioner initially provided letters from Bangladesh Shilpakala Academy, Bangladesh Television, and Bangladesh Betar all identifying her as a member, but these letters do not discuss their specific requirements for admitting members. For example, the letter from Bangladesh Television states that the Petitioner was “listed in the ‘C’ category” and the letter from Bangladesh Betar indicates that she “passed the ‘C’ class in modern music,” but they do not explain the requirements of that category or classification. The Petitioner also provided information from *Wikipedia* about Bangladesh Shilpakala Academy, Bangladesh Television, and Bangladesh Betar. Again, there are no assurances about the reliability of content from *Wikipedia* and therefore its information will be accorded minimal evidentiary weight. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d at 909. Regardless, the information from *Wikipedia* does not provide Bangladesh Shilpakala Academy, Bangladesh Television, and Bangladesh Betar’s membership requirements.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from Bangladesh Television listing its “Enlistment Process Criteria”:

1. The artist has to work in television and media for at least three years.
2. The artist has to work in at least 5 remarkable projects of Bangladesh Television in any sector of art.
3. The artist has to be prominent and widely known among the audience in Bangladesh.
4. The artist has to be Bangladeshi citizen by birth.
5. The artist has to be at least 18 years old.

The Petitioner has not established that the above criteria rise to the level of outstanding achievements. Furthermore, the letter from Bangladesh Television does not indicate that admission to membership in its organization is judged by recognized national or international experts in their disciplines or fields.

The Petitioner’s RFE response also included an article entitled, “Bangladesh Betar - The Story of Glory.” This article states that “[a]rtists were required to go through the audition process in order to perform at the Bangladesh Betar,” but it does not indicate that the organization required outstanding achievements of its members as judged by recognized national or international experts. In addition, the Petitioner presented information about Bangladesh Shilpakala Academy from the Ministry of Cultural Affairs. This information, however, does not discuss Bangladesh Shilpakala Academy’s membership requirements.

The Petitioner has not demonstrated that the membership criteria for Bangladesh Shilpakala Academy, Bangladesh Television, and Bangladesh Betar rise to the level of outstanding achievements. Furthermore, the Petitioner has not shown that admission to membership in their organizations is judged by recognized national or international experts in the field. For these reasons, the Petitioner has not established she meets this criterion.

⁴ See generally 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided multiple articles relating to her work as a singer, but their authors were not identified as required by this criterion.⁵ In addition, the English language translations accompanying the submitted articles were not properly certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document in a foreign language must be accompanied by a full English language translation. *Id.* The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Without such a certification, we cannot rely on the articles' foreign language translations.

Some of the Petitioner's submitted articles did identify an author. For example, April 2023 articles in both *Ittefaq* and *Bangla Telegram* include a single sentence mentioning that the Petitioner would appear with other artists at an upcoming [redacted] Festival concert featuring [redacted] but these articles are not about her. Instead, the articles discuss the [redacted] concert event. *See, e.g., Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the Petitioner presented an April 2019 article about her in *Daily Naya Diganta*, but she has not shown that this publication's circulation or readership renders it a form of major media. The Petitioner therefore has not established she meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner submitted a letter from [redacted] an organizer of the [redacted] Festival [redacted] - 2023, stating that the Petitioner served as a "judge in the Islami Song (Single) category" at [redacted] - 2023. She also provided a certificate and an article in *New Nation* confirming her participation as a song judge at [redacted] - 2023. Accordingly, we withdraw the Director's determination on this issue and conclude that the Petitioner meets this regulatory criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

For this criterion, USCIS determines whether the person has commanded a high salary or other significantly high remuneration for services relative to the compensation paid to others working in the field.⁶ The Petitioner submitted an October 2015 agreement with [redacted] and [redacted] a June 2023 service agreement with [redacted], a July 2021 service engagement with [redacted], a July 2019 service agreement with [redacted] and her 2002-23 income tax forms. She also

⁵ This criterion states that evidence of the published material "shall include the title, date, and author of the material, and any necessary translation." *See* 8 C.F.R. § 204.5(h)(3)(iii).

⁶ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

presented letters from L-A-L-, M-S-H-R-P-, S-M-M-, A-N-T-, D-S-R-, and N-N- all asserting that she is “one of the highest-paid singers in Bangladesh,” but they do not point to any objective compensation data to support their claim. Their letters do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner’s remuneration for services from 2015 through 2023 was significantly high relative to others in the field. Unsupported assertions have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

In response to the Director’s RFE, the Petitioner provided a [] 2024 article in *Bangladesh Today*, entitled []⁷ This article, however, post-dates the filing of the petition. Eligibility must be demonstrated at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1), (12). Regardless, the article in *Bangladesh Today* limits its comparison of the Petitioner’s earnings to the fees charged by only six other performers and therefore it does not offer a valid sampling comparison.

To meet this criterion, the Petitioner must present evidence showing that she has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that she has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, she has not established that she fulfills this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

This criterion focuses on volume of sales and box office receipts as a measure of the person’s commercial success in the performing arts.⁸ Therefore, the mere fact that a person has recorded and released musical compilations or performed in theatrical, motion picture, or television productions would be insufficient, in and of itself, to meet this criterion.⁹ The evidence must show that the volume of sales and box office receipts reflect the person’s commercial success relative to others involved in similar pursuits in the performing arts.¹⁰

As evidence for this criterion, the Petitioner submitted a February 2019 agreement with [] an August 2017 agreement with [] a June 2022 agreement with []

⁷ The author of this article is not identified, and the “News Link” listed for the article, [https://thebangladeshtoday.com/\[\]](https://thebangladeshtoday.com/[]) did not link to the article at *Bangladesh Today*’s website. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁸ *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

⁹ *Id.*

¹⁰ *Id.*

[redacted] a March 2018 agreement with [redacted] a January 2023 payment confirmation letter from [redacted] and a March 2023 payment voucher from [redacted]. This documentation, however, does not show the volume of the sales and box office receipts for the Petitioner's performances or that she has achieved commercial success relative to others involved in similar pursuits in the performing arts. In response to the Director's RFE, the Petitioner provided promotional material relating to her 2024 performances in [redacted]. These performances, however, post-date the filing of the petition. Eligibility must be demonstrated at the time of filing the benefit request. See 8 C.F.R. § 103.2(b)(1), (12). Nevertheless, without evidence of sales or box office receipts demonstrating her commercial successes in the performing arts, the Petitioner has not established that she satisfies this criterion.

III. CONCLUSION

The Petitioner meets the judging and display criteria, but she has not established she satisfies the criteria relating to awards, memberships, published material, remuneration, and commercial successes. Because the Petitioner's inability to meet three of the initial criteria is dispositive of her appeal, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.¹¹

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). See also *Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R.

¹¹ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

§ 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.